

No. 89-1630

Supreme Court U.S.

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IN THE

Supreme Court of the United States

October Term, 1989

LOUIS SOLARO,
Petitioner,

vs.

MONICA CASALINOVA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE NINTH DISTRICT COURT OF APPEALS
FOR SUMMIT COUNTY, OHIO

RESPONDENT'S BRIEF IN OPPOSITION

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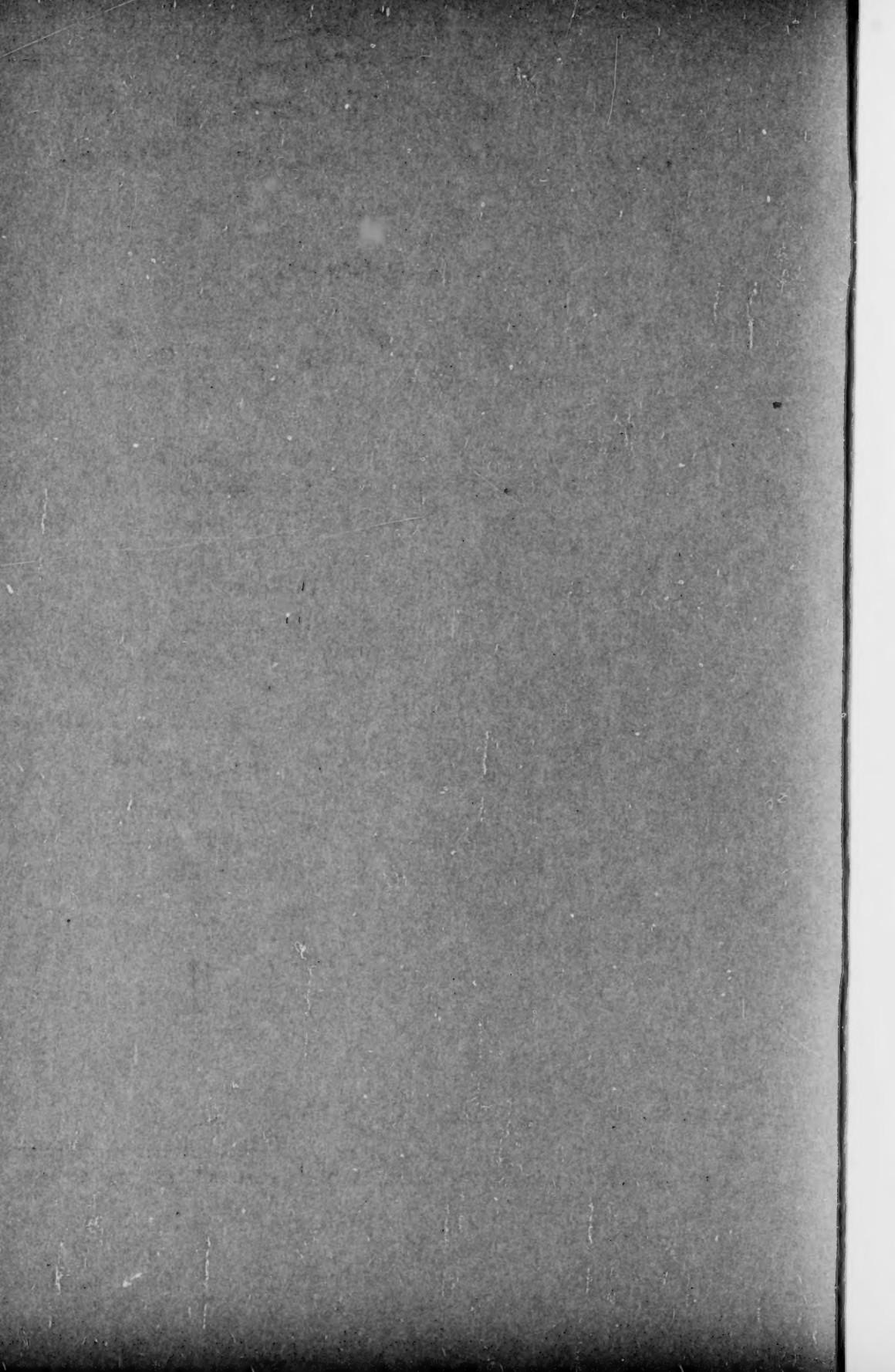


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RESPONDENT'S BRIEF IN OPPOSITION

The Respondent, Monica Casalinova, respectfully requests this honorable Court to deny the petition for writ of certiorari, seeking review of the Court of Appeals of Summit County, Ohio, Ninth Appellate District.

STATEMENT OF THE CASE

Respondent, Monica Casalinova, filed a complaint against Louis Solaro, Petitioner, on November 9, 1988. The complaint and summons were duly served according to law.

After being served with the complaint, Petitioner contacted a non-lawyer third party to submit a settlement offer to Respondent's counsel. Petitioner stated that he took this action in order to avoid the expense of hiring an attorney to defend the lawsuit on his behalf. An offer communicated by Petitioner's intermediary was transmitted to Respondent and was rejected. Approximately one week prior to the answer date of December 16, 1988, counsel for Respondent advised the intermediary that Petitioner should hire a lawyer and that he intended to proceed with the case.

On December 28, 1988, Respondent filed a Motion for Default Judgment pursuant to Rule 55(A) of the Ohio Rules of Civil Procedure. Since Petitioner had not made an appearance in the action, no notice was given to Petitioner when the motion was filed, nor was notice required.

The trial court scheduled a hearing for December 30, 1988, at which time the trial judge heard testimony on the issues raised in Respondent's complaint. Following the hearing, the trial court entered default judgment against Petitioner. At approximately the same time, Petitioner submitted to the Clerk of Courts an answer to the complaint. That action was taken without the knowledge of the trial judge or counsel for the Respondent. Moreover, Petitioner failed to obtain the requisite leave of the trial court before filing the untimely response, as required by Rule 6(B) of the Ohio Rules of Civil Procedure.

The significant fact here is that Petitioner secured the services of counsel to represent him in the action *ten days* before counsel submitted a responsive pleading or made an appearance in the action. That critical fact was deleted from Petitioner's Statement of the Case submitted to this Court. It is also noteworthy that counsel for Petitioner did not contact Respondent's counsel or the court at any time prior to submitting the answer to the office of the Clerk of Courts on December 30, 1988. These facts are substantiated in the record of the case in the court below.

Petitioner filed a Motion to Vacate the Judgment pursuant to Rule 60(B) of the Ohio Rules of Civil Procedure in February, 1989. Following a hearing, the trial court held that Petitioner had failed to establish he was entitled to relief under the rule of *GTE Automatic Electric, Inc. v. ARC Industries, Inc.*, 47 Ohio St. 2d 146 (1976). Under *GTE*, a party seeking relief from judgment must satisfy a three-pronged test, *i.e.*, that: (1) he has a meritorious defense; (2) he is entitled to relief under Ohio Civil Rule 60(B)(1) through (5); and that (3) the motion is made within a reasonable time. *Id.* Where a movant fails to satisfy all three prongs of the test, the motion will be denied. *Id.* The trial court determined that the Petitioner failed to satisfy the rule of *GTE*, and overruled the motion. (See Judgment Entry of Common Pleas Court, Brief of Petitioner at A-26.)

The Petitioner appealed to the Summit County Court of Appeals, Ninth Appellate District. A "due process" issue was raised at that time. The Court of Appeals held that the trial court did not abuse its discretion in its determination that the Petitioner failed to demonstrate entitlement to relief under the rule of *GTE*, and affirmed the decision. (See Opinion of the Ninth District Court of Appeals, Brief of Petitioner at A-2.) Petitioner thereafter appealed to the Supreme Court of Ohio, which dismissed the appeal *sua sponte* as having no substantial constitutional question. (See Entry, Brief of Petitioner at A-1.)

REASONS WHY THE PETITION SHOULD BE DENIED

1. The Petitioner has cited no special or important reasons for discretionary review pursuant to Rule 10, Rules of the Supreme Court.

Petitioner makes a bald, unsupported assertion that his right to "due process" has been violated because the courts below denied him the requested relief. The question becomes, what process was due? Ohio law is well-settled that relief from judgment will be granted if the movant satisfies the three-pronged test of *GTE Automatic Electric, Inc. v. ARC Industries, Inc.*, 47 Ohio St. 2d 146 (1976). This the Petitioner did not do. (See Opinion of Court of Appeals, Brief of Respondent at A-2.) In fact, the courts found that the default occurred as a result of Petitioner's inexcusable neglect. Where a party engages in *inexcusable* neglect, relief from judgment will be denied. See *Antonopoulos v. Eisner*, 30 Ohio App. 2d 187 (1972); *Associated Estates Corp. v. Fellows*, 11 Ohio App. 3d 112 (1983).

Petitioner offers no legal support for his argument that his right to due process has been violated. He presents no cases in conflict, and no cases on point. "Due process" was preserved when the complaint and summons were issued in accordance with law, and the jurisdiction of the court was properly invoked. The Petitioner had notice of the complaint, and knew fully well that failure to answer could result in default. Therefore, there is no basis for Petitioner's argument that this case involves a question of due process.

2. This Court should decline jurisdiction since the judgment below rests on adequate and independent state grounds.

It is well-settled that where a decision of a state court rests squarely on adequate and independent state grounds, this Court will abstain from discretionary review of the case. *Henry v. Mississippi*, 379 U.S. 443 (1965). In *Henry*, this Court stated that it has no power to revise judgments on questions of state law. *Id.* at 447. Here, the Petitioner failed to comply with state procedural rules when he failed to timely file an answer to a complaint which was duly served upon him. After a default judgment was entered against him, Petitioner moved to vacate the judgment pursuant to state law. The trial court conducted a hearing and denied the requested relief. That determination was based solely on state law, i.e., the rule of *GTE Automatic, Inc. v. ARC Industries, Inc.*, 46 Ohio St. 2d 146 (1976), and Rule 60(B), Ohio Rules of Civil Procedure. Furthermore, evidentiary issues raised at the hearing were determined pursuant to the Ohio Rules of Evidence.

This is not a criminal matter involving questions which trigger due process concerns. On the contrary, this is a civil case in which the Petitioner was duly served with summons and complaint. During his own testimony, Petitioner stated unequivocally that he knew that he needed to answer the complaint. This he did not do. On the contrary, Petitioner used an intermediary to relay a settlement proposal. When the offer was rejected, and he retained counsel to defend the lawsuit in his behalf, his own counsel delayed in filing a responsive pleading. By that time, the default hearing had already been conducted, and judgment was entered.

Arguably, the State of Ohio has a legitimate interest in preserving the integrity of its judicial proceedings, and its long-standing right to establish its own procedural rules. This case is a *state* case decided solely on state grounds. This Court should, therefore, refrain from tampering with a matter which clearly does not involve a federal constitutional question.

CONCLUSION

Based on the foregoing, Respondent respectfully requests that the petition for writ of certiorari be denied.

Respectfully submitted,

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